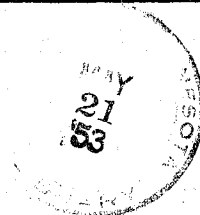


AGAIN THE ISSUE IS FREEDOM

By FRANK CHODOROV



BEFORE THIS SESSION of Congress comes to a close, the country will hear a debate that could be entitled: Resolved, that the Constitution, including the Bill of Rights, shall be the supreme law of the land. For, coming up in the Senate is the so-called Bricker amendment, designed to prevent the subordination of the Constitution to foreign treaties in matters affecting internal affairs. Rid of its legal terminology, the resolution (and its counterpart in the House) is intended to bulwark the sovereignty of the United States against subversion by the UN.

The proposed amendment arises from a rather odd situation. A nation is threatened by invasion, not by a foreign army, but by its own legal entanglements. Not soldiers, but theoreticians and visionaries attack its independence and aim to bring its people under the rule of an agglomeration of foreign governments. This is something new in history. There have been occasions when a weak nation sought security by placing itself under the yoke of a strong one. But, here we have the richest nation in the world, and apparently the strongest, flirting with the liquidation of its independence. Nothing like that has ever happened before.

THE BREACH IN OUR DEFENSES, oddly enough, is in our own Constitution. Article VI provides that "... All Treaties ... shall be the supreme Law of the Land ... any Thing in the Constitution or Laws of any State to the Contrary notwithstanding". This provision was made necessary by the peculiarity of dual authority which characterizes the composition of our political establishment. It would be an embarrassing situation if the State of Maine, for instance, refused to recognize a boundary treaty or a fisheries arrangement with Canada, after such a compact had been executed by the President and confirmed by the Senate.

However, it was assumed when this Article was written that a treaty was a contract to do specific things, carefully spelled out; there was no intention, as Jefferson said, to enable the President and the Senate under this Article to "do by treaty what the whole government is interdicted from doing in any way". That is, in matters concerning our internal management, and unrelated to the treaty, Article VI did not vitiate the Constitution.

But now we are a member of the United Nations, and our freedom of action is mitigated by our obligations as a signatory to its Charter. It is true that this Charter denies to the UN any authority to "intervene in matters which are essentially within the jurisdiction of any state". Nevertheless, the UN had hardly been organized when, with the full approval of our own State Department, the agencies of this body proceeded to make Conventions, Treaties and Pacts to tell the member nations how to conduct their internal affairs. If any of these Conventions, Treaties and Pacts — general in their wording and replete with such loose phrases as "racial equality", "social justice" and "world peace"— should be adopted by the General Assembly of the UN, what influence would they have on our courts, even though they were not formally executed as required by our Constitution? After all, we are a member of the UN, with authorized delegates bound by the vote of its General Assembly.

What Article VI did not envisage are these "blank check" treaties stemming from our membership in an international body. Nor could the Founding Fathers conceive of our own State Department declaring (in an official publication under date of September, 1950) that "There is no longer any real difference between 'domestic' and 'foreign' affairs" — an assertion which, if carried to its logical conclusion, would make the compulsory labor regulations of Moscow applicable to this country, or our monogomy laws applicable to Moslem countries.

The extent to which "blank check" treaties might liquidate the sovereignty of the nation and the freedom of the people was clearly defined by John Foster Dulles in a speech on April 12, 1952:

"The treaty-making power is an extraordinary power liable to abuse. Treaties make international law and they also make domestic law. Under our Constitution treaties become the supreme law of the land. They are indeed more supreme than ordinary laws, for Congressional laws are invalid if they do not conform to the Constitution, whereas *treaty law can override the Constitution*. Treaties, for example, can take powers away from the Congress and give them to the President; they can take powers away from the state and give them to the Federal Government or to some international body and *they can cut across the rights given the people by the constitutional Bill of Rights*." (Emphasis supplied.)

Almost a year after the delivery of this speech, Mr. Dulles, as Secretary of State, spoke before the Senate Judiciary Committee in opposition to the Bricker amendment, saying that the integrity of the present Administration could be relied upon as a protection against "Treaty Law".

THE PLEA OF Mr. Dulles amounts to asking that we place reliance on a government of men rather than of laws. Perhaps he is right, philosophically; no law is better than the men who enforce it. Yet, there is some comfort in being able to call upon the word-

ing of a law when bad administrators seek to circumvent it. And, after all, the Bricker amendment only proposes to prevent the law of the UN from superseding the law of the U.S.

Already this has happened. The people of California have seen fit to legislate against mixed marriages. But a member of the Supreme Court of that state, invoking the Charter of the UN, declared that "In the face of these authoritative pronouncements the matter of racial equality should be a settled issue." (*Perez vs. Lippold*.) Thus, it has been implied that though the sovereignty of a state may stem from its people, it is a sovereignty subject to treaties entered into under our membership in the UN.

In another case (*Fujii vs. State*), the Supreme Court of California overrode the California Alien Land Law, which prohibits aliens from owning land in that state, by calling upon the UN Charter for its authority. "The Charter", concludes the Court's decision, "represents a moral commitment of foremost importance and we must not permit the spirit of our pledge to be compromised or disparaged in either our domestic or foreign affairs." So, the Charter becomes more binding on the court than the previous decisions of the United States Supreme Court on this California law. The Normans did nothing more when they imposed their laws on the Anglo-Saxons.

Nor should it be forgotten that the Chief Justice of the United States Supreme Court argued last year that the President of the United States had authority under the UN Charter, because it was an international treaty, to seize the steel mills, something he could not do under the Constitution. The basis for this reasoning is a clause in the UN Convention which gives the Executive unlimited authority during a declared "emergency". Chief Justice Vinson succeeded in convincing two other members of the Court; six stood by the Constitution. If he had won over two of these six judges, a precedent in favor of the Charter and against the Constitution would have been established.

These cases indicate a trend. The trend is underlined in the Covenant of Human Rights, enthusiastically supported by our delegate to the UN Assembly, Mrs. Franklin D. Roosevelt. This Covenant — which has aroused so much opposition that even UN enthusiasts are willing to drop it from treaty status to a "statement of principles" — provides that "in case of a state of emergency officially proclaimed by the authorities, a state may take measures derogating from its obligations". This means that if the President of the United States declares an emergency to exist, he can suspend the Bill of Rights forthwith. Perhaps Mr. Truman had this in mind when he said last year at a newspaper conference that he had the authority to seize the public press, even as he seized the steel mills.

The Declaration of Human Rights is in fact a blueprint for socialism, and if it were ratified by the Senate, the Bill of Rights in our Constitution would automatically be wiped out. This "great charter of human liberty" provides that "everyone has a right: 'to just

and favorable conditions of work and protection against unemployment' (without defining 'just' or 'favorable'); 'to rest and leisure'; 'to periodic holidays with pay'; 'to social security' ", and a lot of other nice things that add up to totalitarianism. This Declaration, it is interesting to note, was slipped into the Japanese Peace Treaty (as an obligation on Japan), at the instigation of the State Department, and with the acquiescence of Mr. Dulles.

It is reported that the UN has some 200 Conventions in the making, and we may be sure that every one of them is an implied invasion of our sovereignty. But, who among Americans are in favor of this sort of thing?

THERE APPEAR TO BE three groups enrolled in the "New School of Internationalists". First, there are the doctrinaire socialists, with whom must be included the whole congeries of planners, who are convinced that the millenium can be attained through Big Government. The American tradition of limited government, with delegated power, bulwarked by the Declaration of Independence and the Constitution, is the impediment that must be overcome. The chink in the armor of that tradition, they have found, is Article VI. If international law is the supreme law of the land, then the Conventions and Pacts of the UN could serve to override that tradition. The UN becomes an aid to socialists, for breaking through the barrier of the Constitution.

Then there is that agglomeration of sentimentalists who see in international sovereignty the cure for all the ills of national sovereignty. Their reasoning, if it can be called reasoning, runs like this: a number of small governments is bad; therefore, one monster world government is good. Their psychological quirk prevents them from seeing this *non sequitur*, even as it prevents them from learning anything from history.

The third group consists of those conscious Communists who would put this country under the domination of Moscow, and who find in the UN an instrument for their purpose. The U.S.S.R. joined this organization only when it became evident that its Charter was amenable to their plan for world conquest, and there is reason to believe that American stooges wrought the Charter with that end in view. At any rate, the Charter presents no threat to U.S.S.R. sovereignty, only to ours.

But, whether opposition to the Bricker amendment comes from this last group and their equally sinister fellow-traveller dupes, or from the first two, who believe they are motivated by high ideals, the fact is that all of them aim to liquidate the sovereignty of the United States. In short, there is a bit of treason in their hearts.

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State Department Story: The big battle within the State Department in recent weeks (unseen by the voters who wanted a cleanout, and even by many observers here) has been marked by the current strategy of the Acheson holdovers: delay until summer, when Congress goes home. What the old guard desire above all is that the troublesome legislators will remove themselves far from Washington. As long as Congress stays in session, members are all too ready and willing to set up a clamor for a real purge of the Department of State.

Those within the Department who oppose the Acheson holdovers would like Congress to stay on as long as possible. These "Americans", as they are called, have achieved some success in weeding out quite a number of security risks, mostly by getting the individuals involved to resign. This process — it is important to understand — is hastened and probably assured by the threat of Senator McCarthy and his committee. If the "risk" contemplates waging a fight to retain his job, he will quickly reconsider and resign, rather than be called before the McCarthy committee. For, if he faces the Wisconsin Senator, he must tell the truth or take his chances on prosecution for perjury.

Thus the pattern of struggle. Unfortunately, the "Americans" in the Department have little help from the top-level officials. Two high officers appointed in January have failed to clean out their bailiwicks and to serve as active and constructive forces: Mr. Donald Lourie (formerly of Quaker Oats) and Mr. Herman Phleger, Legal Adviser. Despite the fact that both are conservatives and were critical of the Truman regime, they were, on taking their posts, immediately surrounded by the Acheson crowd. They are today, for all practical purposes, "captives" of the middle bureaucracy. This is a phenomenon which — as we have often pointed out — is quite common in the Capital.

Another negative factor: the "meat-ax" which members of Congress wield on State Department appropriations is actually being used to reinforce and more firmly entrench the Acheson holdovers. True, some economies are achieved. But, since less money is available, cuts in the numbers of jobs are inevitable. And the Acheson crowd, still in the administrative saddle, sees to it that they and their friends are retained, and that their conservative and American antagonists within the Department are let out.

There will be more of that as the delaying tactics mature. Every week, the State Department officials ascend Capitol Hill and give the members "sweet talk", agreeing with Congressional criticisms, promising to make the changes Congress wants. They return and do nothing. This Fabian strategy makes mockery of the words which last fall, for millions, served as a hope as well as a slogan — "time for a change".

McCarthy Story: One of the biggest frauds put over on the American public in recent weeks was the affair of the two investigators. Senator McCarthy sent to Europe two of his staff, Messrs. Roy Cohn and David Shine, to look into the operations of the International Information division of the State Department. Wherever they went they seemed to be the magnet of swarms of reporters, both American and local, and the press of the countries visited ran much unfavorable comment. The impression was spread that two irresponsible investigators were sent as a publicity stunt by an irresponsible committee, with baneful effects on opinion in the countries.

The consequences may be baneful. The fault, however, lies not with the twain, but with the foreign apparatus of the State Department whose members were terrified lest the results of the probe lead to the loss

of their jobs, and who stopped at nothing in an effort to discredit the investigators. In short, according to informed opinions from within the State Department itself, Messrs. Cohn and Shine were the victims of a well-planned smear.

The truth is that the two staff men attended — or tried to attend — strictly to business on their trip, which far from being planned as a publicity stunt, was actually projected as a quiet and confidential tour of inquiry. They were surprised and appalled when groups of reporters abroad cornered them for interviews; on occasions, it was obvious to them that State Department people had arranged such interviews without their knowledge. In Germany, Cohn and Shine were actually shadowed by an American State Department investigator when they sought to obtain confidential information from various individuals who probably feared exposure.

A study has been made of the coverage in the German press of the Cohn-Shine visit and experts inform us that the German journalists could not possibly have written their stories without detailed briefing from American officials of the Occupation.

As we go to press, an official announcement is made of the resignation of Theodore Kaghan, deputy director of the public affairs division in Germany. The press reports that Kaghan was “forced” out and was told that if he did not resign he would face “new charges”. Kaghan had attacked the McCarthy subcommittee, referred to the two investigators as “junketeering gumshoes” and engaged in stormy arguments with McCarthy at the hearings.

Public Power: Secretary of the Interior McKay has spoken out against building a federal power dam at Hells Canyon, Idaho, and advocates of socialized electric power have suffered a defeat. However, it was noted that McKay very carefully refused to commit himself in general against all public power plants. Also, observers in the Capital remarked that McKay declined to go along with the program laid down by former President Herbert Hoover in his speech of April 11.

In that address, our most distinguished engineer — with a vast knowledge not only of the mechanics but also of the financing of public power projects — demanded a new power policy to replace the socialistic policy of the Roosevelt and Truman regimes. In no uncertain terms, Hoover showed that the financial statements of the federal power enterprises are fraudulent because they omit a number of expense items which even a schoolboy knows should be included. Mr. Hoover said: “If the omitted interest, the omitted amortization and the refunding of the accumulated deficiency of these items, and other costs I have mentioned, were included, this so-called surplus would turn into a deficit. And I do not include in this deficit any equivalent of taxes — another large sum.”

Hoover recommends that the objective of the federal power policy should be to “get the Federal Government out of the business of generating and distributing power as soon as possible”. It is believed that Hoover will have more to say on this subject, especially if Secretary McKay continues his extraordinary hesitancy to come out for an “all-out” and “all-over” federal power policy.

Bonds and Democrats: The latest in politico-economic stupidity is a proposal (front-paged by the *New York Times* on May 11), emanating from twenty Democratic members of Congress. The proposal, in the form of a memorial to the Federal Reserve Board, is that the Board resume its program of supporting government bonds, instead of resorting to higher interest rates to attract buyers. The assumption is that government support of bond prices will prevent their falling, even if the government pays less than the market rate of interest.

The fact of the matter is that the government was compelled to increase its interest rates, because its low rate issues were not selling. Financial institutions found more profitable outlets for their money. The only thing the government could offer them was safety of investment, but the higher returns from industrial borrowers more than compensated for the risk involved. The government had to meet the market. Now, if

the government reduces its rate, arbitrarily, even if it guarantees the face value of the bonds, will these financial institutions exchange their better paying industrial bonds for government bonds? Hardly.

What then will the government do to get rid of its guaranteed, low-interest bonds? Will it force the institutions to take them? Will it compel banks and insurance companies, holding in trust the deposits and premiums of its customers, to turn over these funds in exchange for its paper, even while private industry offers a higher yield? In that case, we can be sure, there will arise a "black" market for money. The industrialists will advertise that they pay more than the government, and they will find buyers of their securities, at the expense of the legitimate financial institutions.

Or, forsooth, the government can "sell" its unwanted bonds to itself, printing money to pay for them. Have the twenty Democrats thought of that?

An interesting note on this proposal comes from the *Wall Street Journal* of the same day. This paper reports that foreign nations have been putting their surplus trade balances into United States bonds, now that the interest rates are in line with market reality; heretofore, they have been buying gold. Thus, the removal of a fictitiously low rate of interest has extended the market for government bonds beyond our borders. The proposal of the twenty Democrats is tantamount to shutting out this new market.

Strange Case of a Book: Within the past forty-eight hours, the pro-Communist forces in the U.S. have suffered a major set-back. Doubleday and Company has recalled some 5,000 copies (already distributed for sale or to reviewers) of *The Strange Case of Alger Hiss*, by Earl Jowitt, former Lord Chancellor of England. The publishers say that the book has been recalled to correct an error and will be re-issued this summer. But the explanation satisfies few; many find this action strange and unusual, especially in the case of a book already published in Britain. Meanwhile, there are signs of dismay among left-wing circles.

The fact is that the whole Left — from "liberals" to socialists and Communist party members — has been craving such a book, which — according to reviewers in England — casts doubt on the soundness of the verdict of the American jury which convicted Hiss. The fact — shown clearly in the testimony and by the jury verdict — that subversion took place in high governmental circles has been a cruel handicap for the Left.

It is not surprising, therefore, that such a book was written. From England we receive a note from a famous British journalist who tells us: "Laski was originally asked to see to Hiss' vindication on this side of the Atlantic and asked a friend of mine to go to America, study the case (all expenses paid) and write the vindication. My friend said that if he were to study the case, he might come to the conclusion that Hiss was guilty. Laski had never thought of it in this light. Then he died."

Lord Jowitt says that he was neither requested nor commissioned to write the book. But reports that Jowitt was at work on such a book have circulated in America for the past six months. It was known that Jowitt had received a full transcript of the second trial. Who sent it to him? Did the Department of Justice send it to him? These and other questions may be asked by Congress.

The reaction to the book in England certainly was not encouraging. Rebecca West, writing in the *London Sunday Times* (May 3), waxed satirical over Jowitt's blunders and mistakes which showed appalling unfamiliarity with the circumstances of the case. George Sokolsky, American columnist, writing of the book (before the publishers recalled it here) warned that, when finally published, he would "point by point call attention to the factual errors which are unbelievable in a man who has been Lord Chancellor in England".

Colm Brogan, reviewing the book in the *London Daily Telegraph* (April 30), indulged in as much satire as did Miss West, coming to the following conclusion: "I will challenge Lord Jowitt and declare that neither judge nor jury have anything to regret. Alger Hiss was as guilty as they grow and the 12 good men and true did true deliverance make."

The Conservative Mind by Russell Kirk. Chicago: Henry Regnery Company. \$6.50. Reviewed by John Chamberlain.

Long ago J. Donald Adams remarked upon the fear of being labelled “conservative” — a fear that has dominated most Americans. But that fear is passing. The excesses of “egg-headery”, the idiocies of the fellow-travellers, the dawning realization that no magic inheres in such things as public ownership of utilities or conclaves of One-Worlders by the shores of Mahattan’s East River — these and sundry related phenomena have provoked a reaction against the word “liberal”. And so we have a free and open acceptance and glorification of the “conservative” label in Russell Kirk’s brilliant new book, *The Conservative Mind*, which covers a century and a half of English and American intellectual history in the voyage indicated by its subtitle, “From Burke to Santayana”.

Professor Kirk’s own brand of conservatism is a subtle compound of liberal impulses and aristocratic tastes, and its romantic suspicion of modern industrialism often sounds more like Ruskin or William Morris than anything that could truly be labelled “conservative” in a world whose venerable institutions now include the General Motors Corporation. But if Professor Kirk seems willing to accept “status” (as against “contract”) as a possible base for “conservatism” of the future, he triumphs over his own confusion whenever he talks about such things as the property right and the need for preserving local government, local institutions and local liberties. If pressed to a close definition, Professor Kirk would probably argue that “status” — or the prescriptive right of individuals to certain historic dignities — can be written into the terms of the contracts of tomorrow.

The best way of arriving at the core of Professor Kirk’s conservatism is to explore the beliefs of the man who evokes his most unqualified admiration. That man is Edmund Burke. Burke, of course, was a Whig, not a Tory. What Burke wanted to “conserve” was the whole tissue of specific liberties which the British “subject” had won during generations of struggle against the Crown. Burke was against the “l’etat, c’est moi” theories which the English House of Hanover held in common with the Bourbons. He was against the “enlightened despotism” that seemed triumphant during the middle third of the Eighteenth Century. In brief, he stood out against the authoritarian “reactionaries” of his day. The reason why he turned so violently against the French Revolution was that it seemed bent on substituting one centralized tyrant for another. The “general will” of Rousseau, when interpreted by a centralizing Robespierre, seemed just as destructive of old liberties as the “divine will” of God when interpreted by a Louis XIV or a George III.

Like Burke, like Kirk. Kirk, in American terms, is a States’ Righter, a local optioner, a strong Bill of Rights and “reserved powers” man. This makes him a sympathetic interpreter of John Randolph’s concern for the freedom of hometown Roanoke against the demands of Washington. It makes him a partisan of John Calhoun’s idea of the “concurrent majority”, with its implied sanctification of the sectional filibuster. He is against discrimination, but he is also against trying to deal with discrimination by federal force bills.

Simply because he is a partisan of the local prescriptive rights so ably defended by Burke, Kirk finds the “conservatism” of such men as Alexander Hamilton and John Quincy Adams to be singularly deficient. These men believed in centralized power. Professor Kirk keeps stressing the ancient truth: that power, when concentrated at the top of any large-scale organization, is always manipulated by the few. And the “few” are seldom as intelligent as Hamilton, or as nobly disinterested as John Quincy Adams.

John Chamberlain, formerly an editor of the *Freeman*, is now free-lancing.

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